

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

STATE OF MISSOURI ex rel IDEKER, INC.,

Relator,

v.

THE HONORABLE JACK GRATE,

Respondent.

DOCKET NUMBER WD77031

Date: April 8, 2014

Appeal from:
Jackson County Circuit Court
The Honorable Jack R. Grate, Judge

Appellate Judges:
Writ Division: Lisa White Hardwick, Presiding Judge, Alok Ahuja and Karen King Mitchell,
Judges

Attorneys:
Edwin H. Smith and R. Dan Boulware, St. Joseph, MO, and George E. James and Adam R.
Troutwine, Kansas City, MO, for relator.
William T. Session, Kansas City, MO, and Bruce Morrison, St. Louis, MO, for respondent.

MISSOURI APPELLATE COURT OPINION SUMMARY

COURT OF APPEALS -- WESTERN DISTRICT

STATE OF MISSOURI ex rel IDEKER, INC.

Relator,

v.

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Jackson County

The City of Grandview and a non-profit group filed a petition in the Circuit Court of Jackson County, contending that the Missouri Department of Natural Resources (“MDNR”) was issuing air emissions permits without applying the proper federal and state air quality standards. In particular, Grandview alleged that MDNR had unlawfully approved an air emissions permit for Relator Ideker’s operation of a portable asphalt plant in Kansas City. The petition also alleged that MDNR intended to issue Ideker a further permit for a stationary asphalt plant in the same location. The petition sought to vacate Ideker’s existing permit, and prevent MDNR from issuing the further permit.

Grandview’s petition named only MDNR as a defendant. Ideker sought to intervene in the action pursuant to Supreme Court Rule 52.12(a)(2). The circuit court denied Ideker’s intervention motion. Ideker responded by filing a petition for writ of mandamus in this Court. We issued a preliminary writ, and ordered full briefing and argument.

PRELIMINARY WRIT OF MANDAMUS MADE ABSOLUTE.

Writ Division holds:

Ideker has established a clear and unequivocal right to intervene in the underlying action, justifying our issuance of a writ of mandamus ordering the circuit court to grant Ideker intervention.

First, Ideker plainly has a direct and substantial interest in the legality of its existing air emissions permit; it also has an interest in the issuance of the further stationary-plant permit, which Grandview alleged MDNR was on the verge of issuing.

Second, Ideker’s interests would plainly be affected by the disposition of this litigation. If the relief Grandview seeks is granted, Ideker’s existing permit will be declared invalid, and absent intervention it is unclear that Ideker would have any right to seek appellate review of that

ruling. In addition, any legal pronouncements made in this litigation will heavily influence, if not control, future proceedings concerning Ideker's pending permit application.

Third, Ideker has demonstrated that MDNR is not adequately representing its interests. Because Ideker is the entity which will actually suffer economic harm if the permits under which it is operating are invalidated, Ideker has a different interest than MDNR in persuading the circuit court to require a bond as a condition of the issuance of injunctive relief. In addition, Ideker's private interests will also affect whether the trial court issues preliminary or permanent injunctive relief and, if so, what form that injunctive relief will take.

Because Ideker has established each of the elements required to support a claim to intervention of right under Rule 52.12(a)(2), the circuit court was required to permit Ideker to intervene.

Before: Writ Division: Lisa White Hardwick, Presiding Judge, Alok Ahuja and Karen King Mitchell, Judges

Opinion by: Alok Ahuja, Judge

April 8, 2014

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